

Message Text

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SUBJECT: PRISONER TRANSFER TREATY: NEGOTIATIONS

REF: A) ANKARA 6105, B) ANKARA 6058

1. US AND TURKISH TEAMS MET FOR FOURTH DAY OF NEGOTIATIONS ON PRISONER TRANSFER TREATY AUGUST 24. IN ADDITION TO MORNING AND AFTERNOON SESSIONS AT MFA, INFORMAL TALKS CONTINUED DURING LUNCHEON HOSTED BY CHARGE DILLON. BY END OF DAY, TWO SIDES HAD COMPLETED FIRST READING OF DRAFT, EXCEPT OFR PROVISIONS DEALING WITH SUBSTITUTED SENTENCING (ARTICLES 23 AND FOLLOWING).

2. DISCUSSIONS CENTERED ON FOLLOWING ISSUES:

A. SUBSTITUTED SENTENCING. TURKS CONTINUED TO RESIST ACCEPTING US PROPOSAL FOR TWO-TRACK SYSTEM, PERMITTING US TO ACCEPT CUSTODY OF TRANSFERRED PRISONER WITHOUT US COURT FIRST CONFIRMING SENTENCE HANDED DOWN BY TURKISH COURT (REF B). TURKS WONDERED WHETHER CONGRESS COULD REVISE IMPLEMENTING LEGISLATION, CONFERRING JURISDICTION ON US

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COURTS TO HOLD SUCH PROCEEDINGS AND IMPOSE SUBSTITUTED SENTENCE WHILE PRISONER STILL IN TURKEY. US SIDE EXPLAINED THAT PROBLEM WAS MORE FUNDAMENTAL, INVOLVING CONSTITUTIONAL DUE PROCESS REQUIREMENT THAT BEFORE US COURT MAY PROPERLY HEAR CASE, IT MUST HAVE PERSONAL JURISDICTION OVER PRISONER, I.E., HE MUST APPEAR BEFORE THE COURT. THIS REQUIREMENT PROBABLY COULD NOT REPEAT NOT BE SATISFIED SIMPLY BY REVISING LEGISLATION IN

AN ATTEMPT TO CONFER ON US COURTS JURISDICTION OVER AN AMERICAN CITIZEN WHILE HE WAS STILL IMPRISONED IN TURKEY. TURKS WERE UNEASY WITH THIS EXPLANATION BUT INDICATED THEY MIGHT BE WILLING TO ACCEPT TWO-TRACK SYSTEM, IF THEY COULD BE INFORMED PRIOR TO TRANSFER OF THE PERIOD OF TIME THE PRISONER WOULD SPEND UNDER CUSTODY AND PAROLE SUPERVISION AFTER TRANSFER TO THE US. IN EFFECT, TURKS INDICATED THEY WOULD BE WILLING TO ACCEPT IN LIEU OF A SUBSTITUTED SENTENCE THE PAROLE COMMISSION'S FINAL DETERMINATION OF THE TIME A PRISONER WOULD BE INCARCERATED BEFORE RELEASE ON PAROLE. US SIDERESPONDED THAT PRIOR TO FINAL DETERMINATION, PRISONER NORMALLY APPEARS BEFORE PAROLE BOARD IN ORDER TO GIVE HEARING EXAMINERSOR COMMISSIONERS CHANCE TO JUDGE HIS PERSONAL DEMEANOR. ACCORDINGLY, PAROLE BOARD WOULD NOT BE ABLE TO RENDER ITS DECISION PRIOR TO TRANSFER.

B. VERIFICATION PROCEEDINGS. US SIDE DESCRIBED REQUIREMENTS UNDER IMPLEMENTING LEGISLATION FOR HOLDING PROCEEDING TO VERIFY PRISONER'S CONSENT PRIOR TO TRANSFER. NORMALLY THIS PROCEEDING WOULD BE CONDUCTED BY A US MAGISTRATE WHO WOULD COME TO TURKEY TO HOLD THE PROCEEDINGS. TURKS RESPONDED THAT IT WOULD NOT REPEAT NOT BE POSSIBLE UNDER ANY CIRCUMSTANCES TO PERMIT MAGISTRATE OR OTHER US JUDICIAL OFFICIAL TO CARRY OUT SUCH PROCEEDINGS IN TURKEY. TURKS INDICATED THIS WOULD BE SENSITIVE POLITICAL ISSUE FOR TURKISH PARLIAMENTARIANS AND PUBLIC AND COULD NOT REPEAT NOT BE INCLUDED IN TREATY. HOWEVER, THEY SUGGESTED THAT WAY MIGHT BE FOUND FOR AN AMERICAN LIMITED OFFICIAL USE

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CONSUL TO PERFORM SUCH FUNCTIONS WITHOUT VIOLATING PRINCIPLES OF TURKISH SOVEREIGNTY. US SIDE PROPOSED THAT TALKS BE RECESSED UNTIL MONDAY, AUGUST 28, IN ORDER TO CONSIDER TURKISH VIEWS.

3. COMMENT: TALKS APPEAR TO HAVE REACHED CRUCIAL STAGE WHERE ISSUES HAVE BEEN IDENTIFIED AND POSITIONS CLARIFIED. US TEAM IS PREPARING PROPOSALS (SEPTTEL) ON POINTS AT ISSUE TO BE PRESENTED TO TURKS ON MONDAY, AUGUST 28.
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